

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Appeal No. 992-SB of 1998

Date of Decision: December 14, 2007

Darshan Singh

appellant

VERSUS

State of Punjab

Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.T.S.Sangha, Advocate,
for the appellant.

Ms.Rita Kohli, Addl.A.G.Punjab.

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RANJIT SINGH J.

Darshan Singh, appellant, stands convicted for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the Act”) with the allegation that 25 bags containing poppy husk, weighing 36 kgs. each, were recovered from his possession. Strangely, the appellant is held

accountable for a recovery which was from a kotha belonging to one Dev Singh of a different village named Ballran. No recovery was done from his house from where the appellant was taken in custody. He has been fastened with this recovery by showing the same to be at his instance, though from a house of some other person of different village. Would it really be safe to convict a person with an offence having such serious consequences will also invite attention besides other considerations that may arise in this case. Let us notice the facts first.

On 16.11.1996, Inspector Gurmel Singh of CIA staff Bahadur Singh Wala along with other police officials, was present at village Hamirgarh. While on patrol duty, he received a secret information to the effect that Darshan Singh, appellant, resident of Lahal Kalan and Kewal Singh of village Rampura Jawaharwala, Police Station, Lehra, were in the habit of selling poppy husk and that if raid was conducted then huge quantity of poppy husk could be recovered from their respective possession. Finding this information to be reliable, Inspector Gurmel Singh sent Ruqa, through Head Constable Teja Singh, for registration of a case and himself proceeded to conduct raid on the appellants. Appellant Darshan Singh, was found present in house when PW-5 conducted the raid. Nothing, however, was statedly recovered from the house of Darshan Singh. His interrogation then followed, though nothing was recovered from him. Not only that, Inspector Gurmel Singh sought option from the appellant that if he so required, he could be searched in the presence of a gazetted officer or a Magistrate. No recovery but still an option. The appellant opted to be searched in the presence of

a gazetted officer or a Magistrate. A request was then sent, to Sh.Gurdarshan Singh DSP, who reached the place. Appellant Darshan Singh was interrogated in the presence of the DSP when he made a disclosure statement revealing that he had kept 25 bags of poppy husk concealed in a kotha meant for storing chaff (Turi) belonging to one Dev Singh of village Ballran. Evidence further is that this fact was exclusively in the knowledge of the appellant and he volunteered to get it recovered. The statement of the appellant was reduced into writing and was signed by him and was attested by SI Ranjit Singh, ASI Amrik Singh and DSP Gurdarshan Singh. Personal search of the appellant led to recovery of Rs.2,500/- and one key which were also taken into possession vide separate personal search memo. The appellant then allegedly led the police party to the kotha. He is supposed to have opened the lock of the room from where 25 bags of poppy husk were recovered. All the 25 bags were spread on a Tarpaulin and were mixed. Two samples of 250 gms. each were taken out separately and the remaining contraband again put into the same bags. The bags on being weighed were found to contain 36 kgs. of poppy husk each. Police was so accurate to put equal quantity in each bag. The samples and bags were converted into parcels separately and sealed with the seal of DSP Gurdarshan Singh bearing impression 'GS'. The seal after use was returned to the DSP. Sample seal was also prepared and the case property was taken into possession through a recovery memo attested by the aforesaid witnesses. The lock which the appellant had opened was also taken into possession vide separate recovery memo. The appellant along with the case property was

subsequently produced before SHO Ashok Mohan, who verified the facts and put his own seal bearing impression 'AM' on the seal, already affixed. The samples were sent for examination to chemical examiner. On completion of investigation, challan was filed leading to conviction of the sentence of 10 years R.I. coupled with fine of Rs. One lac. The appellant was further directed to undergo RI for two years in case of default in payment of the fine.

Seven witnesses were examined by the prosecution. Main reliance, of course, was on the version given by Inspector Gurmel Singh (PW-5), DSP Gurdarshan Singh (PW-4) and SI Ashok Mohan (PW-1). Dev Singh son of Lal Singh, owner of the kotha from where poppy husk was recovered, was also examined as prosecution witness. The appellant when examined under Section 313 Cr.P.C, pleaded rather strongly that he was falsely implicated in this case because of political reasons. His plea is that he was Sarpanch of a village and Member of Block Samity, Lehragaga. In the year 1996, he was elected as Sarpanch with the margin of 914 votes. Smt.Rajinder Kaur Bhattal, was the then Chief Minister of Punjab. She had sanctioned grant of Rs.Ten lacs to the village for construction of a school. Only Rs.25,000/- was given in cash and she refused to release the remaining grant even after request by the appellant. The appellant, accordingly threatened to leave the Congress party and join Akali Dal, which was an opposite party, if the grant was not released. One Maan Singh, was the then SSP Sangrur, who was very close to Smt.Bhattal. He summoned the appellant. When the appellant informed him that he would not allow the Congress Party to even have a election booth in the village, the

said Maan Singh SSP handed him over to CIA staff. There, claim appellant, he was tortured and ultimately fixed in this false case. The appellant examined Sansi Singh as DW-1, Sukhdev Singh as DW-2, Constable Karnail Singh as DW-3, Hira Lal, Panchayat Officer as DW-4, Harinder Singh as DW-5 and Binder Pal Kaur as DW-6.

It may need a notice that Sansi Singh (DW-1), who was the Sarpanch of village Ballran, came forward to depose that the appellant was Sarpanch of his village and member of Block Smiti and was also an active member of the Congress party. He also gave an evidence in regard to the grant given by Smt.Rajinder Kaur Bhattal (the then Chief Minister of Punjab) which was not released to the Panchyat. He also gave an evidence that the appellant had then left the Congress party when despite pleadings, the grant was not released. DW-1 has led support to the appellant in regard to the role played by Sh.Mann Singh, the then SSP Sangrur, who, according to the witness, was close to Smt.Bhattal. Sukhdev Singh (DW-2), Member Panchayat of village Lehal Kalan, has also given evidence on the same lines as given by DW-1. Similarly Hira Singh (DW-4), Panchayat Officer, Lehragaga, has testified that the appellant was Sarpanch of village and member of Block Smiti. Harinder Singh (DW-5), Senior Clerk of the office of DGP, Punjab, Chandigarh was examined to place on record the file showing that appellant Darshan Singh had filed a complaint against Sh.Maam Singh, the then SSP Sangrur. Similarly, Smt.Binder Pal Kaur (DW-6), Clerk of the office of Deputy Commissioner, Sangrur, proved the copy of the complaint which was given by the appellant against Sh.Roop Singh, SHO.

Keeping in view the rival contentions and the evidence

placed before the Court, the trial Court formulated the following three questions for determination in this case:-

1. Whether the provisions of Section 50 of the Act have not been complied with, if so its effect ?
2. What is the effect of non joining of any independent witness by the police officials ?
3. Whether the defence evidence led on the record by the accused is plausible and convincing ?

There seems to be a basic fallacy in the approach adopted by the trial Court. The most vital aspect of the case, which required prime attention of the Court, perhaps has not been noticed by the trial Court. Violation of the provisions of Section 50 of the Act and non joining of independent witnesses etc. would not be that significant as the fact of recovery being not from a place which was in possession or ownership of the appellant and thus being not from conscious possession. This important aspect relating to recovery seems to have completely escaped consideration and determination by the trial Court. Indeed this is line of attack adopted by Mr.T.S.Sangha, learned counsel representing the appellant. He contends that the recovery was not from the house of the appellant. It concededly was from a kotha, which did not belong to the appellant. The said kotha was also not situated in the village to which the appellant belongs. It was in a different village. To link the appellant with the recovery of the contraband from such a place and to blame him exclusively in that regard is highly unjust, says counsel. Proceeding further, Mr.Sangha submits, that in order to succeed and link the appellant with this recovery, the prosecution was bound to

lead some independent evidence showing how this Kotha located in a different village was in the exclusive possession of the appellant. The prosecution could have, as per the counsel, led evidence to show that the kotha was being used by the appellant or that he was seen keeping the bags in the kotha by any one from that village to bring home the fact that the said kotha was in his possession and use. Counsel further says that this having not been done would make the case of prosecution highly doubtful and certainly not enough to base conviction of the appellant.

The facts, as noted above, are not in any serious dispute. The State counsel could not contest that the recovery was from a kotha located in a different village. Recovery is by Inspector, who was working in CIA staff. He had received a secret information that the appellant was in the habit of selling poppy husk. When the house of the appellant was raided he was found present. Nothing incriminating was recovered from his house. Why offer was made to the appellant by Inspector Gurmel Singh is really not understandable. The requirement of search or calling a gazetted officer would be needed only if some recovery is to be effected from a person or when the house of the appellant was initially raided. Nothing of the sort had happened. The trial Court appears to have unnecessarily concentrated on the aspect of compliance of Section 50 of the NDPS Act. It was not a case of personal search and this requirement was not attracted. There was no need or requirement for the Inspector to summon the DSP at the spot. Those considerations, as noticed by the trial Court, as such, would not arise in this case.

The appellant is being burdened with this recovery on the

basis of the evidence given by the police witnesses alone. The recovery was pursuant to the disclosure statement made by the appellant upon his interrogation. Mr. Sangha is justified in saying that the facts disclosed pursuant to the disclosure statement would be admissible to the extent of recovery alone. The statement made by the appellant leading to recovery would not be admissible in the evidence. Thus the statement that this Kotha was being used by the appellant or that he had the key to the lock etc. can not be taken into consideration and are required to be excluded. To support the fact that the lock of kotha was opened by the appellant one would perforce have to rely upon the version of police witnesses. It is rather easy for the police witnesses to so state. Allegation is that the appellant was falsely implicated because of political reasons.

Recovery is also pursuant to a secret information. Record would not show if this secret information was reduced into writing as is required under Section 42 of the NDPS Act. No report was sent to immediate superior officer by PW-5 which is obligatory under Section 42(2) of the Act. Deposition of PW-5 would show that he had given option to the appellant for being searched in the presence of gazetted officer or a Magistrate as he intended to search his house. For this purpose, there was no need to call DSP etc. for searching the house. Rather the provisions of Section 100(4) of the Cr.P.C. were attracted. For searching the house, joining of an independent witness from a locality would also become essential in terms of Section 100 (4) Cr.P.C.. This Court in **Mani Ram vs. State of Haryana, 1999 (2) RCR (Criminal) 411** though has held that this provision is not mandatory yet non compliance of this Section would

go to make the case of prosecution suspect. In case of Mani Ram (supra) eight bags of poppy straw were recovered from the Nohra of the accused and he was acquitted by this Court by observing that no evidence was led to establish that the accused was in exclusive possession of the property. Here even the recovery is not from the house of the appellant but from the kotha, which belonged to different person and not in exclusive possession or otherwise in possession of the appellant. The evidence in this regard is given by police officers alone. They would not know whether this kotha belonged to the appellant or was in his possession. This information, even if available with the police officers, would have come to their knowledge only upon investigation and thus through the appellant. The prosecution thus was expected to lead the evidence on record from which it could be seen that this kotha was in possession or exclusive possession of the appellant. This when coupled with the fact that the provisions of Section 42(2) of the Act were not complied with would leave the case of the prosecution bristling with doubts. The provisions of Section 42 (2) of the Act or Section 100(4) Cr.P.C. may not be mandatory but this obligatory provisions are also required to be followed. If these are not complied with then a doubt would creep in the prosecution case requiring some additional assurance for basing the conviction. The entire concept behind the provisions of Section 42 (2) of the Act has succinctly been summed up by the Hon'ble Supreme Court in the case of **Beckodan Abdul Rahiman Vs. State of Kerala**, 2002 (2) R.C.R. (Criminal) 385. Section 42 of the Act regulates the power of entry, search, seizure and arrest of a person without warrant or authorisation. However, in case any officer

authorised under this Section intends to search, seize or arrest a person etc. without a warrant or authorisation, then he is required to follow the requirements mentioned in the Section, one of which is that if he has reason to believe from personal knowledge or information given by any person, then to take down the same in writing. The Section also has a proviso contained in it, which reads as under:-

“Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sun set and sun rise after recording the grounds of his belief.”

As per Section 42(2) of the Act, where an officer takes down any information in writing under sub-section (1) or record grounds of his belief under the proviso thereto, he shall forthwith sent copy thereof to his immediate superior official. The Hon'ble Supreme Court has considered this aspect in the case of **Beckodan Abdul Rahiman** (supra). While relying upon the cases of **State of Punjab Vs. Balbir Singh**, 1994 (3) SCC 299 and **Saiyad Mohd. Saiyad Umar Saiyad & Ors. Vs. State of Gujarat**, 1995 (3) SCC 610, the Hon'ble Supreme Court took a view that if there is a total non-compliance of the provisions, then the same effects the prosecution case. It is further observed that to that extent, it is mandatory. In fact, the Hon'ble Supreme Court has emphasized the requirement of

these stringent provisions under the Act having regard to the wide sweep and grave consequences that flow on the proof and on conviction of an accused under the Act. It is in this background, as observed by the Hon'ble Supreme Court, the legislature has enacted and provided certain additional safeguards in the form of various provisions of the Act, which includes Section 42 besides Section 50 of the Act. The Constitutional Bench of the Supreme Court in the case of Balbir Singh (supra) had made a detailed observation in this regard by saying that harsh provisions of the Act would cast a duty on the prosecution to strictly follow the procedure and compliance of the safeguards. It is a known principle of jurisprudence that procedural safeguards contemplated in an Act are required to be considered in the context of and corresponding to the severity of the consequences that may visit by exercise of that jurisdiction. Violation of Section 42 of the Act, even if it be not wholly mandatory, can not easily be ignored. Non-compliance of this provision certainly can be seen as one which may or would cause prejudice to any accused even if it may not end in vitiating the trial. Case law in this regard has been discussed in detail by the Hon'ble Supreme Court in ***Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat***, JT 2000 (1) SC 471. Reference may also be made to ***State of West Bengal and others Vs. Babu Chakraborty***, AIR 2004 Supreme Court 4324, where it has been held that failure to comply with S.42(1), proviso to S.42(1) and S.42(2) would render the entire prosecution case suspect and cause prejudice to the accused.

Thus it can be said that not complying with the provisions

of Section 42 would render the case of prosecution doubtful.

Even otherwise, there are large number of infirmities noticed in the version of PW-5. He did not inform about the secret information either to SSP or SP (D), who was supervisory officer of the CIA staff at Lehragaga. This witness even could not tell the shop from where he has given a telephonic call to DSP. Having said so he immediately changed his version to say that it was given from STD booth. When further questioned he could not tell where this STD booth was situated. Though the information received by PW-5 was that the appellant and Kewal Singh were indulging in sale of poppy husk yet he has no explanation to offer as to why no raid was conducted at the house of Kewal Singh. PW-5 candidly conceded that he did not make any attempt to join any independent person from village Hamirgarh or Lahal Kalan while conducting raid. Strangely, he conceded while under cross-examination that Sarpanch Sansi Singh and two panches had reached the spot but they refused to witness the recovery. Still no action was taken against them and their statements were also not recorded, concedes PW-5. According to PW-5, Dev Singh (PW-7), from whose kotha this recovery was effected, was found present at the time of recovery. He, when examined as witness by the prosecution, did not support its case and rather gave evidence totally against the prosecution. He stated that nobody had taken his kotha on rent. Dev Singh rather stated that he used to tie his cattle and store fodder in this kotha. He (PW-7) was declared hostile on the request of public prosecutor. During his cross-examination PW-7 stated that he did not even know

the appellant and also had no dealing with him. He further stated that the appellant never purchased chaff (turi) from him. He denied if he had given this kotha on rent to appellant for storing chaff. He also denied if any poppy husk was stored by the appellant in this kotha. As per the witness, no poppy husk was recovered in his presence. He denied the fact if he had made any statement before the police that the appellant took this kotha on monthly rent of Rs.200/- and had paid Rs.1200/- as advance for six months. It is seen that PW-7 had appeared on being summoned by the Court. The plea taken by the appellant of his false implication can not thus be easily ignored. The appellant has led sufficient evidence to show that he was Sarpanch of a village and had been given grant by the then Chief Minister of Punjab. The recovery was allegedly effected on 16.11.1996. The evidence of Harinder Singh (DW-5), Senior Clerk in the office of DGP Punjab would show that the appellant had filed a complaint against Sh.Maana Singh, the then SSP Sangrur on 16.11.1996. The SSP was not seen concerned in any manner with the recovery but still the appellant made a complaint against him to the DIG. Of course the complaint was addressed to DGP Patiala Range for enquiry, who as a ritual, found it to be false. Binder Pal Kaur (DW-6) has also proved on record the complaint given by the appellant to DC Sangrur. It is required to be appreciated that the burden to prove its case, as it rests on the prosecution, is not so stringent on the defence. In order to succeed, the prosecution has to show and prove its case beyond any reasonable doubt. The defence, however, can succeed in showing preponderance of probability.

An officer from the CIA staff with police party went on a routine patrolling. Whether they have any responsibility in this regard or not is a moot question. On receipt of a secret information they raided the house of appellant. They make an offer to the appellant for calling a gazetted officer or Magistrate for searching the house but they would not join or associate any independent witness from the locality. DSP, who was summoned, has no jurisdiction over the area. Nothing was recovered from the house of the appellant still the police choose to interrogate him. Recovery is thus fastened to the appellant pursuant to his interrogation. Though recovery is from a Kotha which is neither in possession or control or otherwise proved to be in his possession or control. Concededly this kotha belonged to Dev Singh (DW-7). He came forward not only to deny that this kotha was on rent with the appellant but also to deny that the recovery was in his presence. Though Sarpanch Sansi Singh and two panches of the village, from where recovery is effected, statedly reached the scene as stated by star prosecution witness PW-5, yet they were not joined or associated with the recovery. They rather have been produced in defence by the appellant. In this background, it cannot be urged that these witnesses were just introduced by the appellant. Concededly Sansi Singh (DW-1) and Sukhdev Singh (DW-2) had reached the spot as conceded by PW-5, when the alleged recovery was effected. DW-1 has categorically stated that the appellant was implicated in this false case because of annoyance of the then Chief Minister. No question was addressed to the witness by prosecution that the recovery was effected in his presence. DW-2 has also

deposed that the appellant was falsely implicated by the then SSP Maan Singh on the asking of the then Chief Minister Rajinder Kaur Bhattal. DW-2 indeed has accompanied the appellant to meet the Chief Minister for release of grant. It would be rather unsafe to sustain the conviction in this case. The recovery effected at the instance of the appellant would be available for being used only to the extent as permissible under Section 27 of the Evidence Act.

The Investigating Officers, in this case, have not been found to be honest. It appears that they have taken pains to implicate the appellant by introducing the recovery on the basis of his disclosure. They failed to join any independent witness though available. To my mind an attempt, that too a crude one, on the part of the police to falsely implicate the appellant can be noticed. To serve their masters, police officers seem to have made this story up to involve appellant. If it had not be so, the police would not have failed to raid Kewal Singh against whom there was also a secret information received. This secret information was not reduced into writing. No information, as required under Section 42 (2) of the NDPS Act was sent to superior officer. There cannot be any assurance in this case of the evidence given by the police witnesses that this recovery is a truthful account of events. The person, from whose kotha this recovery is effected, is not proceeded against at all, though he claimed that he had never given this kotha on rent to the appellant. Observations made by this Court in **Balwinder Singh vs. State of Punjab, (P&H), 1999 (2) /RCR (Criminal), 786**, can be handy to refer in this regard. The appellant in this case was fastened with the recovery on the basis of his statement pursuant to Section 27 of the Evidence Act. In fact,

Balwinder Singh's (supra) was a case where the secret information was reduced into writing as required under Section 42 (1) of the Act. The special report had also been sent under Section 42(2) of the Act. The recovery was still doubted by this Court by noticing that instead of effecting recovery by raid, an aid was taken from Section 27 of the Act to record the disclosure statement of the accused. The recovery in this case was even from a house of the accused but still the acquittal was the result as the prosecution could not prove that the kotha was in the ownership of the appellant therein. Conviction in the present case can not be sustained on any ground what-so-ever. The prosecution in this case has miserably failed to prove its case by any reliable or cogent evidence. The manner in which the police witnesses had conducted the investigation need much to be desired. The defence set up by the appellant is sufficiently made out. False implication of the appellant cannot be ruled out. It was at the instance of the executive head of the State who also belonged to District Sangrur and as such, the police of the said district could be considered to be at her back and call. They would have certainly been over obliging to do anything even though illegal. In view of the innumerable infirmities as noticed, it is not possible to sustain the conviction. The appeal is accordingly allowed. The conviction and the sentence awarded to the appellant is set aside.

I am restraining myself to direct action against the police officials, who are apparently involved in implicating the appellant falsely in this case in view of the incident being old. It is a mystery that this conduct of the police officers were not taken note of. Governments have come and gone but no one has ever bothered to

see the highhandedness on the part of the police to oblige political bosses. The trend continues. Pliable officers are being used by all regimes headed by all political outfits or these officers are using every regime to hide their respective crimes. I say no more to express my disgust. The bail bonds and surety bonds, if any furnished in the trial Court, shall stand discharged.

(RANJIT SINGH)
JUDGE

December 14, 2007

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